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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. _____
)	
STEPAN COMPANY,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by authority of the Attorney General and acting at the request of the Administrator of the Environmental Protection Agency (EPA), alleges:

NATURE OF THE ACTION

1. This is a civil action brought under Sections 106(b)(1) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9606(b)(1) and 9607(a). This action seeks to recover civil penalties pursuant to CERCLA Section 106(b)(1), 42 U.S.C. § 9606(b)(1), for the defendant's failure to conduct a response action at the D'Imperio Property Superfund Site ("Site") upon order of the President pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). This action also seeks to

recover costs that have been and will be incurred by the plaintiff in connection with conducting actions in response to the release or threatened release of hazardous substances at or from the Site, including costs of enforcement.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 1395, and 42 U.S.C. § 9613(b), because the claims arose in this district and the release or threatened release of hazardous substances occurred in this district.

DEFENDANT

4. Defendant Stepan Company ("Stepan") is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is located at 22 West Frontage Road, Northfield, IL 60093.

THE STATUTORY SCHEME

5. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as "response actions." 42 U.S.C. §§ 9604(a), 9601(25).

6. Under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1):

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource),

or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment
....

7. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides, in addition to the President's authority to undertake response actions under Section 104 of CERCLA, that:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may . . . after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

8. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

9. Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(a), provides:

Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

10. Pursuant to the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, the maximum civil penalty for noncompliance with an administrative order that takes place after January 30, 1997 shall be \$27,500.

11. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances [a "generator" of hazardous substances]; . . .

shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan; . . .

THE SITE AND RESPONSE ACTIONS

12. The D'Imperio Property Superfund Site ("Site") is located on a parcel of property on Black Horse Pike in Hamilton Township, Atlantic County, New Jersey, designated as Block 1134, Lots 3.01 and 3.02 on the tax map of Hamilton Township.
13. During the 1970's, a number of companies, including Stepan, arranged with Lightman Drum Company ("LDC") by contract, agreement or otherwise, for the transport or disposal of their wastes. Such wastes contained hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) ("hazardous substances").
14. From approximately 1974 to 1976, LDC disposed of the wastes generated by its customers, including Stepan, into unlined trenches in a 1½ acre area within the Site.
15. In September 1983, EPA listed the Site on the National Priorities List, 40 C.F.R. Part 300, Appendix B, which is a list of hazardous waste sites nationwide that pose the greatest threat to public health, public welfare, and the environment. The National Priorities List is established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).
16. In 1985, EPA completed a study of the soils and groundwater at the Site and found that the soils and groundwater were contaminated with numerous CERCLA hazardous substances including volatile organic compounds, semi-volatile organic compounds, and heavy metals.
17. CERCLA hazardous substances of the kind contained in the wastes that were owned by Stepan and that were disposed of at the Site are the same kind as were found at the Site.
18. Numerous hazardous substances that were found at the Site are known or suspected human carcinogens or cause non-carcinogenic adverse health effects. In 1985, EPA

determined that the public at or near the Site was at risk of exposure to these hazardous substances through direct contact with soil and potential consumption of contaminated groundwater.

19. EPA selected a remedial action for the Site in a Record of Decision dated March 27, 1985. The remedy comprises: (1) excavation and off-site disposal in an approved disposal facility of 3,900 cubic yards of contaminated waste, soils and buried drums; (2) pumping and treating of the contaminated groundwater; and (3) construction of a low permeability clay cap over the excavated area.

20. In March 1987, EPA completed the first phase of the remedy, comprising excavation and off-site disposal in an approved disposal facility of 3,900 cubic yards of contaminated waste, soils and buried drums.

21. In 1992, EPA completed a remedial design for the second phase of the remedy, *i.e.*, pumping and treating of contaminated groundwater.

22. In August 1993, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the Regional Administrator, EPA Region II, issued an Administrative Order, Index No. II-CERCLA 20117 ("1993 Order") to LDC, Jerome Lightman and 11 generators at the Site, including Stepan. The 1993 Order directed the respondents to: (a) modify the remedial design for the groundwater remedy; (b) perform the groundwater remedy; and (c) conduct a soil study.

23. In issuing the 1993 Order, EPA determined that the release and threatened release of hazardous substances into the environment at the Site may present an imminent and substantial endangerment to the public health or welfare or the environment. EPA also determined that the response activities required by the 1993 Order were necessary in order to prevent any such endangerment.

24. The 1993 Order also provided that if EPA determines that additional response activities may be necessary to protect human health and the environment, EPA may require the respondents to conduct such additional response activities.

25. In August 1995, EPA issued Administrative Order, Index No. II-CERCLA 95-0111 ("1995 Order"), requiring two additional generators to coordinate and participate with the respondents to the 1993 Order in performing the work required under the 1993 Order.

26. The 11 generator respondents to the 1993 Order agreed to comply with the 1993 Order and the two generator respondents to the 1995 Order agreed to comply with the 1995 Order (collectively, "Performing Parties"). Construction of the groundwater treatment system at the Site has been completed, and the operation and maintenance phase of the groundwater remedy is being performed.

27. In 1998, the Performing Parties completed the soil study required under the 1993 and 1995 Orders. The soil study indicates that numerous CERCLA hazardous substances still remain in an area of the subsurface soils within the former disposal area, including, but not limited to: benzene, chloroform, 1,2-dichloroethane, cis-1,2-dichloroethene, ethylbenzene, methylene chloride, tetrachloroethene, toluene, 1,1,1-trichloroethane, trichloroethene and phenol.

28. Some of the CERCLA hazardous substances found in the contaminated subsurface soils remaining at the Site are of the same kind as are contained in the waste that was owned by Stepan and that was disposed of at the Site.

29. On January 7, 2000, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the Regional Administrator, EPA Region II, issued a modification to the 1993 Order ("Modified 1993 Order") and a modification to the 1995 Order ("Modified 1995 Order") (collectively "Modified Orders"). The Modified 1993 Order was issued to the same parties as were

respondents to the 1993 Order, including Stepan. The Modified Orders required the respondents to perform additional response actions at the Site, specifically: (a) an investigation to characterize and delineate the contaminated soils remaining in the former disposal area; and (b) a report identifying alternative methods of cleaning up the contaminated soils.

30. In issuing the Modified Orders, the Regional Administrator determined that the contaminated soils remaining in the subsurface may cause hazardous substances to migrate and further impact the groundwater quality, and that additional response activities are necessary to protect human health and the environment at the Site.

31. The Modified 1993 Order required the respondents to notify EPA of their intent to comply with the orders by no later than January 21, 2000.

32. Stepan received the Modified 1993 Order. By letter dated January 21, 2000, Stepan notified EPA that it would not comply with the Modified 1993 Order. Stepan has not complied with the Modified 1993 Order.

33. With the exception of Stepan, LDC and Jerome Lightman, all of the respondents to the Modified Orders have agreed to comply with those orders, and are, in fact, complying with those orders.

34. The United States has incurred incremental costs expended in enforcement activity as a result of Stepan's failure to comply with the Modified 1993 Order.

GENERAL ALLEGATIONS

35. Stepan is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

36. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

37. Releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and threatened releases, of hazardous substances at or from the Site have occurred and continue to occur.

38. The United States has incurred and continues to incur response costs in responding to the release or threatened release of hazardous substances at the Site.

FIRST CLAIM FOR RELIEF: COST RECOVERY

39. Paragraphs 1 through 38 are incorporated herein by reference.

40. Stepan is liable to the United States pursuant to Section 107(a)(3) of CERCLA 42 U.S.C. § 9797(a)(3), as a person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at a facility owned or operated by another party or entity and containing such hazardous substances.

41. The United States has incurred and will continue to incur costs of response, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to respond to the releases or threatened releases of hazardous substances at the Site, including enforcement costs in connection with this matter.

42. The costs of response actions taken by the United States prior to the date of this complaint in connection with the Site were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

43. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Stepan is jointly and severally liable to the United States for response costs incurred and to be incurred in connection with the Site.

SECOND CLAIM FOR RELIEF: CIVIL PENALTIES

44. Paragraphs 1 through 43 are incorporated herein by reference.
45. Since January 21, 2000, Stepan has, without sufficient cause, failed or refused to comply with the Modified 1993 Order issued by EPA pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a).
46. Stepan is liable to the United States, under Section 106(b)(1) of CERCLA, 42 U.S.C. §§ 9606(b)(1), for penalties of up to \$27,500 per day for each day of noncompliance with the Modified 1993 Order.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Stepan to reimburse the United States for all response costs incurred in connection with the Site, all response costs to be incurred by the United States in the future in connection with the Site, and for all interest accrued on such costs;
2. Order Stepan to pay civil penalties of up to \$27,500 for each day of Stepan's noncompliance with the Modified 1993 Order;
3. Award the United States the costs of this action; and
4. Grant such other and further relief as the Court deems appropriate.

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